

27. The composition according to Claim 1, wherein the paracrystalline phase is a direct hexagonal phase.

28. The composition according to Claim 1, wherein the paracrystalline phase is a cubic phase.

29. The composition according to Claim 1, wherein the paracrystalline phase is a mixture of a direct hexagonal phase and a cubic phase.--

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#### SUPPORT FOR AMENDMENTS

Support for the clerical, non-limiting amendments to claims 1 and 22 can be found, *inter alia*, at page 7, line 6 *et seq.* Support for new claim 23 can be found, *inter alia*, at page 19, lines 15-16; support for new claims 24 and 26 can be found, *inter alia*, in examples 1 and 2; support for new claim 25 can be found, *inter alia*, at page 17, lines 19-20 and page 18, lines 18-22; and support for new claims 27-29 can be found, *inter alia*, at page 7, lines 6-7. Claims 1-29 are currently pending.

#### REMARKS

The pending claims relate to foaming cream compositions comprising a surfactant system such that at least one paracrystalline phase of the direct and/or cubic hexagonal type appears when the temperature increases above 30°C and remains present up to at least 45°C, and an active agent (anti-seborrhoeic or antimicrobial agent).

As noted in the present specification, current foaming cream compositions are not thermally stable, resulting in product separation into at least two phases after storage under hot conditions (that is, above 40°C). (Page 4, lines 2-5). Such thermally unstable products, after storage under hot conditions, are unusable due to the degradation of the products'

texture as well as their foaming properties. (Page 4, lines 5-8). Because commercial products are often subject to temperatures as high as 50°C during transport (page 4, lines 15-17), thermal instability of such foaming cream compositions represents a substantial problem.

The presently claimed compositions address such problems associated with foaming cream compositions. The claimed compositions contain a unique surfactant system such that at least one paracrystalline phase of the direct and/or cubic hexagonal type appears when the temperature increases above 30°C and remains present up to at least 45°C. This surfactant system affords greater thermal stability for the claimed foaming cream compositions. As such, the claimed compositions are novel and represent an advance in the art deserving of patent protection.

In view of this background, each of the rejections made in the outstanding Office Action will now be addressed in turn.

#### REJECTION UNDER 35 U.S.C. §112

The Office Action rejected claims 1-22 under 35 U.S.C. § 112, second paragraph, as being indefinite for using the term “type.” Applicants respectfully submit that the clerical, non-limiting amendments to claims 1 and 22 have rendered this rejection moot, and that this rejection should be withdrawn.

#### OBJECTION UNDER 33 C.F.R. §1.75(C)

The Office Action objected to claim 3 for failing to further limit the subject matter of claim 1. Applicants respectfully traverse this objection.

Claim 1 is broader in scope than claim 3. Claim 1 is directed to cream compositions generally, whereas Claim 3 is directed to a subset of such compositions having certain

physical characteristics. Applicants respectfully submit that one skilled in the art would recognize that not all cream compositions fall within the criteria set forth in claim 3 and, thus, that not all cream compositions inherently possess the characteristics in claim 3.

In view of the above, Applicants respectfully request that this objection be withdrawn.

#### REJECTION UNDER 35 U.S.C. §103

The Office Action rejected claims 1-22 under 35 U.S.C. § 103 as obvious over U.S. patent 5,911,981 (“Dahms”), U.S. patent 5,629,279 (“Erilli”) and U.S. patent 5,601,833 (“Ribier”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Dahms neither teaches nor suggests surfactant systems having the claimed paracrystalline phase, nor does Dahms teach or suggest thermally stabilizing foaming cream compositions with such a surfactant system. Dahms relates to foam bubbles and to stabilizing such bubbles during use. (Col. 1, lines 12-16; col. 1, line 65 through col. 2, line 7). Dahms’ stabilization of bubbles results from delaying the transition from “stable spherical foam” to “unstable hexagonal foam” during use. (Col. 1, lines 30-38; col. 3, lines 22-23 and col. 12, lines 35-44). Thus, Dahms does not relate in any way to *thermal* stabilization. Moreover, Dahms’ only teaching regarding “hexagonal” structures relates to the form of foam bubbles, not a paracrystalline phase associated with the surfactant system. To the extent Dahms discusses hexagonal structures in foam bubbles, it teaches that such structures are unstable. (Col. 2, lines 4-7). One skilled in the art, seeking to thermally stabilize foaming cream compositions, would not have been motivated by Dahms to use the claimed surfactant systems to achieve such stability.

Similarly, Erilli neither teaches, suggests, nor recognizes the importance of incorporating the claimed surfactant systems into foaming cream compositions, nor does Erilli teach or suggest thermally stabilizing foaming cream compositions or how to achieve such stabilization. Erilli's deficiencies are highlighted by the fact that Erilli's compositions are liquid, and that his compositions do not contain water-insoluble surfactants. In contrast, the presently claimed compositions are foaming cream compositions. Moreover, the claimed surfactant system typically contains at least one water-soluble surfactant and at least one water-insoluble surfactant. (Page 10, lines 20-23).

Ribier does not compensate for Dahms' and Erilli's deficiencies. Ribier was merely cited for the proposition that one skilled in the art would have been motivated to add active agents to Dahms' or Erilli's compositions, and the correctness of this assertion need not be addressed here in view of the deficiencies noted above for Dahms and Erilli.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. § 103 should be withdrawn.

Finally, Applicants request that the Examiner consider (and initial as having been considered) all references submitted with the Information Disclosure Statement filed August 30, 2001. In particular, Applicants note that PCT WO 01/05932 has not been initialed as having been considered. An extra copy of Applicants Form-1449 is attached hereto for the Examiner's convenience.

Applicants submit that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'R. Treanor', written over a horizontal line.

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1. (Amended) A foaming composition which is a cream for topical application, and which comprises, in an aqueous medium:

(1) a surfactant system such that at least one paracrystalline phase selected from the group consisting of direct hexagonal phase, [and/or] cubic phase, and mixtures thereof, [hexagonal type] appears when the temperature increases above 30°C and such that said paracrystalline phase remains present up to at least 45°C; and

(2) an active agent selected from the group consisting of anti-seborrhoeic active agents and antimicrobial agents.

22. (Amended) A method for cleansing greasy skin and/or acne-prone skin, said method comprising:

(A) applying to the skin of a subject in need thereof, an effective amount of a composition in the presence of water;

(B) massaging said composition to form a foam; and

(C) removing said foam by rinsing with water,

wherein said composition comprises, in an aqueous medium:

(1) a surfactant system such that at least one paracrystalline phase selected from the group consisting of direct hexagonal phase, [and/or] cubic phase, and mixtures thereof, [hexagonal type] appears when the temperature increases above 30°C and such that said paracrystalline phase remains present up to at least 45°C; and

(2) an active agent selected from the group consisting of [chosen from] anti-seborrhoeic active agents and antimicrobial agents.

Claims 23-29 (New)